JD–208–98
Buffalo, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MAINLINE CONTRACTING CORPORATION

and Case 3–CA–21198

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 17

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Thomas S. Gill, Esq.,
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DECISION

Statement of the Case

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Buffalo, New York, on October 20, 1998. Subsequently, briefs were filed by each party. The proceeding is based upon a charge filed March 20, 1998,[1] International Union of Operating Engineers, Local No. 17. The Regional Director's complaint dated June 25, alleges that Respondent, Mainline Contracting Corporation of Buffalo violated Section 8(a)(1) and (3) of the National Labor Relations Act by implementing a new hiring procedure which, inter alia, prohibits job applicants from disclosing protected concerted activities and which informs applicants that they will not be hired if they disclose protected concerted activities.

Upon a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

Findings of Fact

I. Jurisdiction

Respondent is engaged in the construction industry as a demolition contractor in the Buffalo, New York area.

[1] All following dates will be in 1998, unless otherwise indicated.

It annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside New York and it admits that at all times material is has been an employer engaged in operations affecting commerce within the meaning of Sections 2(2)(5) and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

Dennis Franjoine is regional manager for the Respondent is responsible for work in New York, Pennsylvania, and Ohio. Vanessa Franjoine is the Respondent's chief operating officer. Both Mr. and Ms. Franjoine testified that in December of 1997, there had no policy concerning the hiring of people in the field. If Mr. Franjoine needed someone, he would ask the supervisor if he knew anyone who was qualified for the position, and would also ask employees if they knew anyone. At times they ran ads, but he could not remember when. In 1997 people did not always fill out applications before they were hired and most of the people hired were by word of mouth. Mr. Franjoine did not give the supervisors any instructions on hiring but testified that the company wanted people who were experienced in the position to be filled and that Mainline wanted to know who they were by reputation or by verifying prior experience through telephone calls. He also said he had no policy on keeping applications, he kept some and threw others away, and they stayed on his desk until he cleaned up. In December 1997 Robert Zuchlewski held a position as one of Respondent's project managers and in February 1998 he became vice president of operations. As project manager he hired certain support staff but had no duties or experience with hiring employees for the field. Field positions include those involving the operations of heavy equipment and require the work skills generally held by operating engineers or persons identifiable as equipment operators.

On December 1, 1997, Union organizer Christopher Hollfelder drove a Union member to the Respondent's Buffalo office where the member obtained a job application form. Hollfelder testified that he had learned that Respondent was one of the contractors that might be involved in a large demolition job of a plant near the Buffalo airport, and he wanted to make copies of the job application form available to members of the Union so that they could apply for work with Respondent. He made copies at the Union's office and then directed Union agents to telephone members of the Union who were unemployed to invite them to come to the Union's office on December 2, to fill out job applications to submit to Respondent.

Approximately 20 members came and filled out copies of Respondent's 10-page job application form. Hollfelder instructed each member to write "volunteer union organizer" on the top of the first page of the application form because it was "important to our organizational drive." Each member also filled out several Union forms, including a resume, cover letter and Union job application form to submit to Respondent along with the application form.

Later that morning the Union members were taken to Respondent's office in a bus owned by the Union. Upon arrival Hollfelder accompanied the members into the office to submit their applications. The visit was videotaped by member Tim Hayden. The videotape camera recorded the entire visit and the video tape was played back during the course of the hearing. The transcription of the audio portion of the videotape is reflected in the record at pages 33 through 38.

The videotape and Hollfelder's subsequent testimony shows that Hollfelder met and spoke with project manager Zuchlewski in the reception area. During their conversation, Zuchlewski gave Hollfelder his business card. Hollfelder informed Zuchlewski that the applicants were looking for operator, driver or laborer work and had completed application

forms with them. Zuchlewski, in an apparent reference to the video camera, said, "Can I ask what that's for?" Hollfelder replied:

> "I want to just record the application process if that's okay." Zuchlewski said:
>
> "Well, I don't see the need for it, really" and Hollfelder commented: "It's good records for their unemployment if they have to fill out anything for a job search."

The applicant then proceeded, one at a time, in an orderly manner, to submit their applications to Zuchlewski, while Hollfelder and Zuchlewski continued their conversation. Zuchlewski said that he would go through the applications and get in touch with Hollfelder. He verified that Hollfelder was the contact person to check with for the group and, when Hollfelder inquired if the applicants could come back and update their applications if necessary, Zucklewski stated that the applications would be kept on file for approximately six months and that job applications are kept "on file for any future reference as we need people." Zuchlewski told Hollfelder to "please feel free to come back and update" the applications as desired.

Hollfelder and Zuchlewski then discussed job openings. Zuchlewski said that there were no positions available at the time, but that there possibility would be an opening for a mechanic. As each applicant left and boarded the bus, Zuchlewski walked outside with Hollfelder where they continued their conversation. Hollfelder informed Zuchlewski of his organizing effort, offered to sit down with Zuchlewski and talk about the Union. Hollfelder thanked Zuchlewski and told him to have a nice day.

Subsequently, Hollfelder made several unsuccessful attempts to reach Zuchlewski by telephone to inquire about the status of the applications. Then, on January 5, he spoke by telephone with Ms. Franjoine, and inquired whether the Union members' job applications were in order and Franjoine confirmed that they were.

In late January 1998, Hollfelder accompanied three more Union members to Respondent's office to submit job applications. Hollfelder found the door to Respondent's office locked and a new sign on the door which stated: "Mainline Contracting is not currently accepting applications or resumes. Thank you for your interest in Mainline."

In March each Union member who had submitted applications to Respondent on December 2, 1997, received a letter from Respondent dated March 6, and signed by Vanessa Franjoine.

The letter states that "Mainline is required by law not to discriminate on the basis of race, religion, sex. . . . or protected concerted act activity under the National Labor Relations Act," and that Respondent has "adopted neutral hiring procedures and we want to tell you what they are." The letter then sets forth six items as hiring procedures. Item 4 states as follows:

> 4. Applicants are forbidden from marketing their application blanks to show race, religion, color, creed, sex, national origin, age, legal out-of-work activity, bankruptcy, or protected concerted activity under the National Labor Relations Act. Applications

> delivered to Mainline with any such information on them will not be considered for any purpose. (Boldface in original)

The letter ends by informing the applicants that Respondent is not presently hiring and that their applications would be placed in an inactive file as they were more than 30 days old.

The Respondent also began using a new application form which reads as follows on the top of the first page:

> APPLICATION FOR EMPLOYMENT
>
> This application must be filled out in our offices. A photocopy of this application form will not be accepted. This application is valid for thirty (30) days. If you are still seeking employment at the end of thirty (30) days, you must reapply.
>
> Mainline Contracting Corp. Is an equal opportunity employer. If you provide any information not requested on this application form, such as race, religion, color, creed, sex, national origin, age, or protected concerted activity under the National Labor Relations Act, your application will be rejected and not considered for any purpose.

A representative application, that submitted by union member Francine Dole, on December 2, included a resume (on Union stationary), that indicated that she had 4 years of apprenticeship coursework, 11 years experience as a Union journeyperson and knowledge of backhoes, track hoes, bulldozers, graders, hydraulic cranes and forklifts. She also thereafter listed general experience on the equipment and recent specific work as a forklift, excavator and loader operator (with a CDL Class I license).

III. Discussion

The General Counsel contends that Respondent violated Section 8(a)(1) of the Act by implementing a new hiring procedure which prohibits job applicants from disclosing protected concerted activities and which informs applicants that they will not be hired if they disclose protected concerted activities, citing *H.B. Zachry Co.,* 319 NLRB 967, 968 (1995) in which the Board found that an employer violated Section 8(a)(1) of the Act by adopting and maintaining a policy to disqualify job applicants who provided additional unrequested information on the employer's job application form, including information that the applicant is a "volunteer union organizer." Respondent, on the other hand, cites *International Broth. Of Boilermakers v. NLRB*, 127 F.3d 1300 (11 Cir. 1997), in which the 11th circuit considered a petition to enforce the NLRB's decision in *Zachry* and found that writing "voluntary union organizer" on the top of an application blank is designed to communicate only with the employer, and thus is not a right protected by Section 7. The court, in denying enforcement, concluded:

> "The right then which the Union and the Board asked us to recognize, is the right for union applicants to let potential employers know about their union affiliation in direct contravention of the employer's neutral nondiscriminatory policy prohibiting extraneous information of any kind. We are not aware of a single court which has recognized such a right."

This proceeding involves the Respondent's apparent failure to consider hire union affiliated applicants for positions in the construction industry equipment operators. The Board endorses a causation test for cases turning on employer motivation, see *Wright Line, a Division*

of Wright Line, Inc., 251 NLRB 1083 (1980), *NLRB v. Transportation Management Corp.,* 103 S. Ct. 24469 (1983), however, the foundation of Section 8(a)(1) and (3) "failure to hire" allegations rest on the holding of the Supreme Court ruling that an employer may not discriminate against an applicant because of that person's union status, *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 185-87, U.S. Ct. 845 (1941).

This case does not arise in the 11th Circuit and I find that it would be improper for me to rely on a Court of Appeals decision instead of relevant Board decisions on the issues, see *Waco, Inc.,* 273 NLRB 746, 749 fn. 14 (1984), in which the Board emphasized that "it is a judge's duty to apply established Board precedent which the Supreme Court has not reversed," citing *Iowa Beef Packers*, 144 NLRB 615, 616 (1963). See also *Ford Motor Co.,* 230 NLRB 716, 718 fn. 12 (1977), enfd. 571 993, 996-1002 (7th Cir. 1978), aff'd 441 U.S. 488, 493 fn. 6 (1979), and *TCI West, Inc.,* 322 NLRB 928 (1997). Accordingly, I shall follow the Board's precedent in *Zachary,* supra, on this issue and I find that the uncontested record shows that the Respondent directly and expressly prohibited applicants from expressing protected concerted activities under the National Labor Relations Act on the application form. In *Zachry*, supra, the employer prohibited the provision of additional unrequested information, such as writing "volunteer union organizer" on its application form and in the instant case, Respondent's prohibition also expressly states that applications delivered to Respondent in violation of the prohibition will not be considered for any purpose. Accordingly, I find that consistent with *Zachry,* the Respondent's new hiring procedures noted in item No. 4 of its March 6 letter and at the top of its new application forms which prohibits and disqualifies applicants that disclose protected concerted activity under the National Labor Relations Act are inherently destructive of employee Section 7 rights and, violate Section 8(a)(1) of the Act, as alleged.

In this connection it also is observed that the right to communicate with an employer is not solely a right of an individual, but also a right enjoyed by the Union as an agent representative of a collective group of applicants/employees. This is especially in the construction industry, where Unions and employers can reach Section 8(f) agreements. In the instant case Union representative visited Mr. Franjoine in the Summer of 1998 at a job site and apparently sought to discuss the possibilities of such an agreement but Franjoine indicated that he was too busy. The law also permits a union to otherwise make non-malicious, non-coercive efforts to communicate with a company in an effort to pressure it to accede to a union's bargaining demands or organizational efforts or to protest unfair labor practices, see *Burns Security Services*, 324 NLRB 485 (1997) and here, the Respondent shows no extraordinary circumstance that would strip the Union of its rights to engage in organizational activities or activities to maintain the economic status of its members. By the same token, the use of union members, not otherwise employed in the trade, as "salts" does not affect their status as statutory employees and it does not deprive them or the Union of protection under the Act, compare *M.J. Mechanical Services*, 324 NLRB 812 (1997).

The focus of the Court's disagreement with the Board decision in *Zachry* appears to narrowly seize upon the individuals rights to communicate with one another to organize on the job site and an analogy with the well established right to display Union insignia in the work place that can be seen by other workers. However, in a case of this nature, where union applicants are seeking employment, it would appear that identification of union status could be communicate to company officials as well as non-union employees and have some influence on their feelings. Moreover, it is not a question of whether this is a goof or bad, or an effective or non effective technique. Here, the issue to be decided is the basic question of whether union affiliated job applicants can be discriminated against by the establishment of hiring practices that infringe upon their rights and the rights of their representative, the union to act on behalf of their belief. This is not a right that should be read narrowly, as suggested in the *Boilermakers*

decision supra, relied upon by the Respondent.

Turning to the Section 8(a)(3) aspect of the complaint the evidence establishes that the hiring policies expressed in Respondent's March 6 letter and set forth in its new application forms were developed and implemented for discriminatory reasons. Ms. Franjoine admitted that the hiring procedures enumerated in the March 6 letter, including item 4, were not in effect until after December 2, 1997. Specifically, items (1) that Respondent would not accepted applications unless there were actual job openings; (2) that it would post a notice on its door that Respondent is accepting applications; (3) application blanks must be filled out on the premises on an original application blank; (5) that only three applicants would be permitted in Respondent's office at one time; and (6) prohibiting videotaping on the premises, did not exist as Respondent policies until after the Union's December 2, visit and all of these policies are tailored to respond to the Union's appearance at its office with 20 applicants, each of whom submitted photocopied applications which had been completed off premises.

The record establishes that Respondent also changed its policy concerning the time period during which job applications would remain active. Project manager Zuchlewski said that the Union members' applications would be kept on file for future use and for approximately six months. Ms. Franjoine, more than a month later, also told Hollfelder that the applications were still in order. The March 6 letter, however, states that, because the Union members' applications were more than 30 days old, they were inactive and that the Union members would have to file new applications.

The Respondent minimizes Zuchlewski's role in any hiring of field employees, however, he subsequently was promoted to a position as a vice president of operations and he clearly represented himself to the applicants and the Union representative as one who held apparent authority to deal with their concerns. Moreover, at no subsequent time did the Respondent communicate any refutation of his authority to the Union or the applicants. Accordingly, I find that the General Counsel has made a showing sufficient to support an inference that the employees' union or protected concerted activities were a motivating factor in Respondent's subsequent decision to change the conditions under which applicants may seek employment. Accordingly, the testimony will be discussed and the record evaluated in keeping the criteria set forth in *Wright Line and Transportation Management,* supra, to consider Respondents defense and whether the General Counsel has carried his overall burden.

As pointed out by the Court, in *Transportation Management Corp.,* supra*:*

> an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected concerted activity.

Here, the Respondent argues that it became concerned with compliance with anti-discrimination laws. While the application form in use in December 1997 did include questions concerning job applicants' sex and marital status, the Respondent admitted that during the 10 years the old employment application form was in use, Respondent had hired women and minorities, but their hiring had not prompted any review of the Respondent's hiring policies. The old form had no items pertaining to unions, union membership or concerted activity under the National Labor Relations Act and I find that there was no apparent need to alter the job application form or change any hiring policy to avoid discrimination on the basis of any Section 7 activity.

Here, there was one major intervening act, the December 2 visit of Union and the Union applicants (followed up by further inquiries in January), that clearly triggered the Respondent's actions and I find that the Respondent's demonstrated prior lack of concern over hiring

practices belies its expressed reasons and I find them to be pretextual. Under these circumstances, I find that the Respondent has failed to persuasively show that it would have changed its application procedures and provisions even in the absence of the events which occurred on December 2 and I find that it is thus clear that Respondent's review of, and changes to, its hiring practices were motivated by the Union's submission of job applications and not by any professed business concern. The prohibition on applicants' expression of Union activities on employment applications was motivated by that action and designed to disqualify from consideration for hire Union members who expressed a desire to engage in organizing activities. Accordingly, the record establishes that Respondent violated Section 8(a)(1) and (3) of the Act, as alleged.

The establishment of a policy and maintenance of hiring procedures that discriminate and prohibit considerations of an applicant who communicates his beliefs or status regarding protected concerted activity under the Act also must be found to be a practice designed to preclude consideration of an entire class of applicants. Accordingly, the Respondent is shown to have engaged in discriminatory conduct that is inherently destructive of important employee rights, see *Zachry,* supra and *Great Dane Trailers*, 388 U.S. 26, 34 (1967) cited therein.

The Respondent's asserts that project manager Zuchlowski "was frightened and intimidated by the large group of people in the lobby" and that he then made up a story about the nature of the application process to get the applicant out "without physical violence." It then relies on the Board's holding in *Heiliger Electric Corp.,* 325 NLRB No. 175 (1998) to contend that the overall environment created by the Union applicants was so intimidating and hostile as to privilege the Respondent to not consider them for hire.

Here, I find the Respondent's argument to be a gross and inaccurate representation of the record and what actually occurred. What happened here was an almost completely opposite to the factual situation in the cited *Heiliger* case, where the union applicants barged past the owner into a back office occupied by a supervisor, where they were repeatedly asked to leave and they refused to do so, and when express requests to cease videotaping were ignored and, where the videotaping was particularly invasive as it provided close scrutiny of personal private papers. As pointed out by the Charging Party, the videotape (General Counsel's Exhibit 3) shows that the Union applicants and their spokesperson, Hollfelder, were extremely respectful, courteous and professional.

A reading of the transcript of the audio portion of the video of that event as well as a viewing of the video shows that Zuchlewski was not flustered, hostile or defensive while interacting with the Union agent and applicants and I do not credit any of his testimony which attempts to portray the encounter as being somehow hostile, violent or unlawful on the part of the Union. The audio demonstrates that when Zuchlewski saw the video camera he did not request that it be removed or turned off but merely said "Can I ask what that's for." Hollfelder respectfully replied "I want to just record the application process if that okay" and, again, Zuchlewski merely replied "Will I don't see the need for it, really." Clearly, the Union was not asked to stop videotaping and there is no other indication that the taping was invasive or illegal in nature.

Here, the Respondent attempts to distort the nature of the encounter and, in fact, gives support to the concept that a union has a valid need to document such events in order to accurately reflect the actual nature of its application attempt and thus protect itself and its members from false or misleading claims by an employer. The video shows that the applicants even lined up and individually proceed to give their application to Zuchlewski in a calm, orderly, uncrowded manner. The whole procedure was low key, Zuchlewski shook hands as Hollhelder

was leaving and there was no questionable or disruptive behavior (although a union sticker was placed on the bumper of what turned out to be Zucklowski's car which was parked outside the entrance). Accordingly, I find that the Respondent has failed completely to show that the Board's decision in *Heiliger* has any bearing in this case or that the applicants in any way engaged in improper activity that would act to deny them the protection of the Act to which they otherwise are entitled.

On brief the Respondent also alludes to this Court's refusal to allow an offer of proof. That did not occur. At the beginning of the hearing I granted petitions by the General Counsel and the Union to revoke subpoenas by the Respondent which sought from the Board, among other things, all changes filed by the Union alleging discriminatory hiring practices. At that time I also suggested that when the Union's agent, Mr. Hollfelder, was on the stand he could be asked some questions, which might generate the information sought. The Respondent's counsel then made a statement that if the evidence had been produced it would show a large number of charges and I then interrupted. Counsel did not preface his remarks as an offer of proof nor did he then ask to make an offer of proof but he did assert that I had denied him that opportunity. I stated that that was an incorrect representation.

I now hereby reaffirm that conclusion.

Counsel failed to communicate any specific request to make an offer of proof. Moreover, I had already suggested that any inquiry could be deferred until a witness was on the stand. At that point if a specific offer of proof had been advanced it would have within my discretion (especially upon objection by the General Counsel or the Union), to reject an offer of proof as to an adverse witness, see *Auto Workers (Borg-William Corp.),* 231 F.2d 237, 242 (7th Cir. 1956). Although the Respondent cross examined witness Hollfelder, it failed any questions about the Union's filing of charges and thereby failed to avail itself of an opportunity to lay any further foundation. An offer of proof may be excluded where the nature of the evidence sought to be adduced was made know to the court, as here, by the description in the subpoena and otherwise was apparent from the context of counsel's statements. Moreover, in this instance the purported offer related to information from an adverse party, the subject material was of no probable relevancy and it was material from an adverse party that had been revoked as a valid subject for a subpoena and, under these circumstances, it was neither a valid nor a viable offer of proof and a ruling that cuts off debate on the matter does not affect any substantial procedural right of the Respondent.

Conclusions of Law

1. Respondent is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By implementing a new hiring procedure which prohibits job applicants from disclosing protected concerted activities and which informs applicants that they will not be hired if they disclose protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

4. By discriminatorily implementing a new hiring policy because Union members had applied for employment with Respondent, the Respondent violated Section 8(a)(1) and (3) of the Act.

V. Remedy

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

Here, there is no allegation that the Respondent refused to hire anyone, accordingly, the relief granted will be limited to an order requiring rescission of the hiring rules found to be illegal and requiring future consideration of the named applicants or other Union affiliated applicants who may seek employment. Such consideration shall be for a period valid for 6 months (the time frame first announced to the applicants). Otherwise, it is not considered necessary that a broad Order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act I hereby issue the following recommended[2]

ORDER

Respondent, Mainline Contracting Corp., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Implementing a hiring procedure which prohibits job applicants from disclosing protected concerted activities and which informs applicants that they will not be hired if they disclose protected concerted activities.

(b) Discriminatorily implementing a new hiring procedure which effectively precludes consideration of applicants who chose to exercise their Section 7 rights and by refusing to consider for employment job applicants who disclose protected concerted activity or who otherwise fail to comport to hiring procedures which have the effect of precluding union affiliated applicants from consideration.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action:

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days from the date of this Order, consider for hire Francine A. Dole, Steven A. Everett, James J. Erhardt, Richard Ferraro, Edward M. Fischer, Mark W. Flowers, Paul R. Heim, Lynda R. Hummel, Angela Lambert, Carl A. Larson, Tracy Myles, Ellen E. Preischel, David D. Ricotta, Robert C. Slocum, Stephen S. Smith, Gary R. Swain, Antonio Ventresca, Kenneth J. West, James W. Yeates, Joe R. Bilger, Robert Grankowski, Danny L. Hayes, Paul Franklyn Pittorf and Kathleen Kirk St. John in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions.

(b) Within 14 days of this Order, rescind the hiring policies set forth on its new application form and in its March 6, 1998, letter to the applicants named above and notify each applicant of such rescission and inform them that they will be considered for hire and that the application will be valid for 6 months.

(c) Within 14 days of service by the Region, post at its Buffalo, New York, facilities and all current job sites and mail to each applicant named above, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a reasonable official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. December 29, 1998.

_____
Richard H. Beddow, Jr.
Administrative Law Judge

[3] If this Order is enforced by a Judgment of the United States of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act by implementing a hiring procedure which prohibits job applicants from disclosing protected concerted activities and which informs applicants that they will not be hired if they disclose concerted activities.

WE WILL NOT discriminatorily implement a hiring procedure which effectively precludes consideration of applicants who chose to exercise their Section 7 rights.

WE WILL NOT refuse to consider for employment job applicants who disclose protected concerted activity or who otherwise fail to comport to hiring procedures which have the effect of precluding union affiliated applicants from consideration.

WE WILL NOT in any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, consider for hire Francine A. Dole, Steven A. Everett, James J. Erhardt, Richard Ferraro, Edward M. Fischer, Mark W. Flowers, Paul R. Heim, Lynda R. Hummel, Angela Lambert, Carl A. Larson, Tracy Myles, Ellen E. Preischel, David D. Ricotta, Robert C. Slocum, Stephen S. Smith, Gary R. Swain, Antonio Ventresca, Kenneth J. West, James W. Yeates, Joe R. Bilger, Robert Grankowski, Danny L. Hayes, Paul Franklyn Pittorf and Kathleen Kirk St. John in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions.

WE WILL within 14 days of the Board's Order, rescind the hiring policies set forth on our new application form and in its March 6, 1998, letter to the applicants, named above and notify each applicant named above of such rescission and inform them that they will be considered for hire and that the application will be valid for 6 months.

MAINLINE CONTRACTING CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387, Telephone 716–846–4951.